IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 1240 of 2006(S)

OA.348/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:
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1. UNION OF INDIA, REPRESENTED BY
THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF AGRICULTURE, DEPARTMENT OF
ANIMAL HUSBANDARY & DAIRYING, NEW DELHI.

2. THE DIRECTOR, CENTRAL INSTITUTE
OF FISHERIES, NAUTICAL & ENGINEERING
TRAINING (CIFNET), KOCHI.

3. THE SENIOR ADMINISTRATIVE OFFICER,
CENTRAL INSTITUTE OF FISHERIES,
NAUTICAL & ENGINEERING TRAINING (CIFNET)
KOCHI.

BY ADV. SRI.JOHN VARGHESE, ASSISTANT SG

RESPONDENTS:

E.N. LEELAMANIAMMA,
AGED 58 YEARS, W/O. G.P. PANICKER,
STENOGRAPHER GR.II, ENTRAL INSTITUTE OF
FISHERIES, NAUTICAL & ENGINEERING TRAINING,
KOCHI. RESIDING AT `ASWATHY', NO.34/2044,
MANGALAM, KOCHI-24.

BY ADV. SRI.T.C.GOVINDA SWAMY
SMT.D.HEERA
SMT.SUMY.P.BABY
SRI.P.NPANKAJAKSHAN PILLAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF OA NO.348/2004 OF THE CAT, ERNAKULAM DT.4.5.2004

EXT.P2-TRUE COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS IN OA 348./2004

EXT.P3-TRUE COPY OF THE ADDITIONAL REPLY STATEMENT FILED BY THE PETITIONERS IN DO.

EXT.P4-TRUE COPY OF ORDER DATED 11.4.2005 IN DO.

EXT.P5-TRUE COPY OF ORDER IN OA 968/2004 OF THE CAT, JABALPUR BENCH.

// TRUE COPY //

P.S. TO JUDGE

J.B. Koshy & T.R. Ramachandran Nair, JJ.

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W.P.(C).NO.1240 of 2006-S

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Dated this the 29th day of March, 2007

JUDGMENT

T.R. Ramachandran Nair, J.

This writ petition is filed by the petitioners who were respondents in O.A. No.348 of 2004 before the Central Administrative Tribunal, Ernakulam Bench.

2. The respondent filed the application aggrieved by the cancellation of the First and Second Financial Upgradations under the ACP Scheme as per memo dated 12.2.2001, marked as Annexure A1 in the O.A. The cancellation was based on an audit query made by the Internal Audit. It was not preceded by any notice also.

3. The respondent was granted First and Second Financial Upgradation under the ACP Scheme as per order 13-1/2000 ADM dated 30.11.2000. She was initially appointed as a Junior Stenographer on 12.1.1968. The Assured Career Progression Scheme (ACP Scheme) for certain Government employees was implemented by the Government of India as per Annexure A2 produced before the Tribunal. Paragraph 5.1 of Annexure A2 reads as follows:

> "5.1. Two financial upgradations under the ACP Scheme in the entire Government service career of an employee shall be counted against regular promotions (including situ promotion and fast-track promotion availed through limited departmental competitive examination) availed from the grade in which an employee was appointed as a direct recruit. This shall mean that two financial upgradations under the ACP Scheme shall be available only if no regular promotions during the prescribed periods (12 and 24 years) have been availed by an employee. If an employee has already got one regular promotion, he shall qualify for the second financial upgradation only on completion of 24 years of regular service under the ACP Scheme. In case two prior promotions on regular basis have already been received by an employee, no benefit under the ACP scheme shall accrue to him."

The admitted position as far as the respondent herein is that she completed 24 years of service as on 12.1.1993 and as on 9.8.1999 (the date of Annexure A2) she had completed 30 years of service. The Financial Upgradations were granted to her in the scale of pay of Rs.5000-8000 and Rs.5500-9000 with effect from 9.8.1999 as per Annexure A3.

4. The apparent reason for cancellation as detailed in Annexure A5 which was in reply to her representation is that she was offered vacancy based promotions during 1994-99 which she had declined to accept. It is mainly relying upon action taken against one K.G. Vimala on similar facts.

5. The Tribunal considered the matter in detail as per Ext.P4 and relying upon the relevant clauses of the ACP Scheme and the order passed by the Tribunal in O.A. No.172/2004 in a similar case, it was held that the cancellation of the Financial Upgradation is illegal and accordingly

quashed the impugned orders Annexures A1, A5 and A6. O.A. No.172/2004 was filed by Smt. K.G. Vimala.

6. It is seen from the pleadings and materials produced that during the period of 24 years, she had not availed any promotion. Going para 5.1 of Annexure A2, two Financial Upgradations under the ACP Scheme shall be available, if no regular promotions during the prescribed period (24 years) have been availed by an employee. Hence, it is clear and evident that she was entitled for the benefit of the Scheme. In O.A. No.172/2004, a similar view was taken by the Tribunal. The department had challenged the same in Writ petition No.14621/2005 before this court and by judgment dated 25.5.2005, the order of the Tribunal was upheld. the Division Bench took the view that "the benefit under the ACP Scheme is to be granted from the date of completion of the eligibility period prescribed or from the date of issue of the instructions, whichever is later." While considering the arguments of the department, it was further held in paragraph 11 as follows:

> " But the underlined objective of the Scheme has to be forgotten altogether, if such interpretation is accepted. The crucial period, referred to in the Scheme, was 24 years and within the period the employee should not have received promotions, and in a case there was one promotion, he should not have received a second promotion within a total period of 24 years."

Their Lordships were of the view that as there was no offer for promotion

after the ACP Scheme was introduced, disentitlement would have been there only in a case where the employee had declined a promotion before she completed 12 years of service or 24 years of service, as the case may be. In the words of their Lordships, "to prescribe a disability after completion of such terms would amount to incorporation of an additional condition, and not in conformity with the principle decipherable." Accordingly, this court refused to interfere with the order passed by the Tribunal in O.A. No.172/2004. We agree with the said findings of the Division Bench in W.P.(C) No.14621/2005 and do not find any reason to vary from the reasoning adopted by the Division Bench. It may also be pertinent to notice that R.P. No.740/2005 filed against the judgment was also closed and S.L.P. (Civil) No.3631/2006 has also been dismissed by the Honourable Supreme Court as per order dated 10.2.2006. Here, the main reason stated by the petitioners in Annexure A5 banking on the case of K.G. Vimala falls to the ground. Herein the applicant was granted the benefit by the petitioners as per Annexure A3 rightly as she was found eligible for it.

As the Tribunal has considered the eligibility of the applicant in accordance with the Scheme, we find no reason to interfere with the above order. Therefore, the writ petition is dismissed. The view taken by the

Tribunal is not at all perverse warranting interference under Article 227 of the Constitution of India. No costs.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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